

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 671

AN ACT

To repeal sections 191.900, 191.905, 208.909, 565.184, and 630.155, RSMo, and to enact in lieu thereof seven new sections relating to protection of vulnerable persons, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 191.900, 191.905, 208.909, 565.184, and 630.155, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 191.900, 191.905, 191.2290, 208.909, 565.184, 630.155, and 630.202, to read as follows:

191.900. As used in sections 191.900 to 191.910, the following terms mean:

(1) "Abuse", the infliction of physical, sexual or emotional harm or injury. "Abuse" includes the taking, obtaining, using, transferring, concealing, appropriating or taking possession of property of another person without such person's consent;

(2) "Claim", any attempt to cause a health care payer to make a health care payment;

(3) "False", wholly or partially untrue. A false statement or false representation of a material fact means the failure to reveal material facts in a manner which is intended to deceive a health care payer with respect to a claim;

(4) "Health care", any service, assistance, care, product, device or thing provided pursuant to a medical assistance program, or for which payment is requested or received, in whole or part, pursuant to a medical assistance program;

(5) "Health care payer", a medical assistance program, or any person reviewing, adjusting, approving or otherwise handling claims for health care on behalf of or in connection with a medical assistance program;

(6) "Health care payment", a payment made, or the right under a medical assistance program to have a payment made, by a health care payer for a health care service;

(7) "Health care provider", any person delivering, or purporting to deliver, any health care, and including any employee, agent or other representative of such a person, and further including any employee, representative, or subcontractor of the state of Missouri delivering, purporting to deliver, or arranging for the delivery of any health care;

(8) "Knowing" and "knowingly", that a person, with respect to information:

(a) Has actual knowledge of the information;

(b) Acts in deliberate ignorance of the truth or falsity of the information; or

(c) Acts in reckless disregard of the truth or falsity of the information.

Use of the terms knowing or knowingly shall be construed to include the term "intentionally", which means that a person, with respect to information, intended to act in violation of the law;

(9) "Medical assistance program", MO HealthNet, or any program to provide or finance health care to participants which is established pursuant to title 42 of the United States Code, any successor federal health insurance program, or a waiver granted thereunder. A medical assistance program may be funded either solely by state funds or by state and federal funds jointly. The term "medical assistance program" shall include the medical assistance

program provided by section 208.151, et seq., and any state agency or agencies administering all or any part of such a program;

(10) "Neglect", the failure to provide to a person receiving health care the care, goods, or services that are reasonable and necessary to maintain the physical and mental health of such person when such failure presents either an imminent danger to the health, safety, or welfare of the person or a substantial probability that death or serious physical harm would result;

(11) "Person", a natural person, corporation, partnership, association or any legal entity.

191.905. 1. No health care provider shall knowingly make or cause to be made a false statement or false representation of a material fact in order to receive a health care payment, including but not limited to:

(1) Knowingly presenting to a health care payer a claim for a health care payment that falsely represents that the health care for which the health care payment is claimed was medically necessary, if in fact it was not;

(2) Knowingly concealing the occurrence of any event affecting an initial or continued right under a medical assistance program to have a health care payment made by a health care payer for providing health care;

(3) Knowingly concealing or failing to disclose any information with the intent to obtain a health care payment to which the health care provider or any other health care provider is not entitled, or to obtain a health care payment in an amount greater than that which the health care provider or any other health care provider is entitled;

(4) Knowingly presenting a claim to a health care payer that falsely indicates that any particular health care was provided to a person or persons, if in fact health care

of lesser value than that described in the claim was provided.

2. No person shall knowingly solicit or receive any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind in return for:

(1) Referring another person to a health care provider for the furnishing or arranging for the furnishing of any health care; or

(2) Purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering any health care.

3. No person shall knowingly offer or pay any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, to any person to induce such person to refer another person to a health care provider for the furnishing or arranging for the furnishing of any health care.

4. Subsections 2 and 3 of this section shall not apply to a discount or other reduction in price obtained by a health care provider if the reduction in price is properly disclosed and appropriately reflected in the claim made by the health care provider to the health care payer, or any amount paid by an employer to an employee for employment in the provision of health care.

5. Exceptions to the provisions of subsections 2 and 3 of this section shall be provided for as authorized in 42 U.S.C. Section 1320a-7b(3)(E), as may be from time to time amended, and regulations promulgated pursuant thereto.

6. No person shall knowingly abuse or neglect a person receiving health care.

7. A person who violates subsections 1 to 3 of this section is guilty of a class D felony upon his or her first conviction, and shall be guilty of a class B felony upon his

or her second and subsequent convictions. Any person who has been convicted of such violations shall be referred to the Office of Inspector General within the United States Department of Health and Human Services. The person so referred shall be subject to the penalties provided for under 42 U.S.C. Chapter 7, Subchapter XI, Section 1320a-7. A prior conviction shall be pleaded and proven as provided by section 558.021. A person who violates subsection 6 of this section shall be guilty of a class D felony, unless the act involves no physical, sexual or emotional harm or injury and the value of the property involved is less than five hundred dollars, in which event a violation of subsection 6 of this section is a class A misdemeanor.

8. Any natural person who willfully prevents, obstructs, misleads, delays, or attempts to prevent, obstruct, mislead, or delay the communication of information or records relating to a violation of sections 191.900 to 191.910 is guilty of a class E felony.

9. Each separate false statement or false representation of a material fact proscribed by subsection 1 of this section or act proscribed by subsection 2 or 3 of this section shall constitute a separate offense and a separate violation of this section, whether or not made at the same or different times, as part of the same or separate episodes, as part of the same scheme or course of conduct, or as part of the same claim.

10. In a prosecution pursuant to subsection 1 of this section, circumstantial evidence may be presented to demonstrate that a false statement or claim was knowingly made. Such evidence of knowledge may include but shall not be limited to the following:

(1) A claim for a health care payment submitted with the health care provider's actual, facsimile, stamped,

typewritten or similar signature on the claim for health care payment;

(2) A claim for a health care payment submitted by means of computer billing tapes or other electronic means;

(3) A course of conduct involving other false claims submitted to this or any other health care payer.

11. Any person convicted of a violation of this section, in addition to any fines, penalties or sentences imposed by law, shall be required to make restitution to the federal and state governments, in an amount at least equal to that unlawfully paid to or by the person, and shall be required to reimburse the reasonable costs attributable to the investigation and prosecution pursuant to sections 191.900 to 191.910. All of such restitution shall be paid and deposited to the credit of the "MO HealthNet Fraud Reimbursement Fund", which is hereby established in the state treasury. Moneys in the MO HealthNet fraud reimbursement fund shall be divided and appropriated to the federal government and affected state agencies in order to refund moneys falsely obtained from the federal and state governments. All of such cost reimbursements attributable to the investigation and prosecution shall be paid and deposited to the credit of the "MO HealthNet Fraud Prosecution Revolving Fund", which is hereby established in the state treasury. Moneys in the MO HealthNet fraud prosecution revolving fund may be appropriated to the attorney general, or to any prosecuting or circuit attorney who has successfully prosecuted an action for a violation of sections 191.900 to 191.910 and been awarded such costs of prosecution, in order to defray the costs of the attorney general and any such prosecuting or circuit attorney in connection with their duties provided by sections 191.900 to 191.910. No moneys shall be paid into the MO HealthNet

fraud protection revolving fund pursuant to this subsection unless the attorney general or appropriate prosecuting or circuit attorney shall have commenced a prosecution pursuant to this section, and the court finds in its discretion that payment of attorneys' fees and investigative costs is appropriate under all the circumstances, and the attorney general and prosecuting or circuit attorney shall prove to the court those expenses which were reasonable and necessary to the investigation and prosecution of such case, and the court approves such expenses as being reasonable and necessary. Any moneys remaining in the MO HealthNet fraud reimbursement fund after division and appropriation to the federal government and affected state agencies shall be used to increase MO HealthNet provider reimbursement until it is at least one hundred percent of the Medicare provider reimbursement rate for comparable services. The provisions of section 33.080 notwithstanding, moneys in the MO HealthNet fraud prosecution revolving fund shall not lapse at the end of the biennium.

12. A person who violates subsections 1 to 3 of this section shall be liable for a civil penalty of not less than five thousand dollars and not more than ten thousand dollars for each separate act in violation of such subsections, plus three times the amount of damages which the state and federal government sustained because of the act of that person, except that the court may assess not more than two times the amount of damages which the state and federal government sustained because of the act of the person, if the court finds:

(1) The person committing the violation of this section furnished personnel employed by the attorney general and responsible for investigating violations of sections 191.900 to 191.910 with all information known to such person

about the violation within thirty days after the date on which the defendant first obtained the information;

(2) Such person fully cooperated with any government investigation of such violation; and

(3) At the time such person furnished the personnel of the attorney general with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

13. Upon conviction pursuant to this section, the prosecution authority shall provide written notification of the conviction to all regulatory or disciplinary agencies with authority over the conduct of the defendant health care provider.

14. The attorney general may bring a civil action against any person who shall receive a health care payment as a result of a false statement or false representation of a material fact made or caused to be made by that person. The person shall be liable for up to double the amount of all payments received by that person based upon the false statement or false representation of a material fact, and the reasonable costs attributable to the prosecution of the civil action. All such restitution shall be paid and deposited to the credit of the MO HealthNet fraud reimbursement fund, and all such cost reimbursements shall be paid and deposited to the credit of the MO HealthNet fraud prosecution revolving fund. No reimbursement of such costs attributable to the prosecution of the civil action shall be made or allowed except with the approval of the court having jurisdiction of the civil action. No civil action provided by this subsection shall be brought if restitution and civil penalties provided by subsections 11

and 12 of this section have been previously ordered against the person for the same cause of action.

15. Any person who discovers a violation by himself or herself or such person's organization and who reports such information voluntarily before such information is public or known to the attorney general shall not be prosecuted for a criminal violation.

191.2290. 1. The provisions of this section and section 630.202 shall be known and may be cited as the "Essential Caregiver Program Act".

2. As used in this section, the following terms mean:

(1) "Department", the department of health and senior services;

(2) "Essential caregiver", a family member, friend, guardian, or other individual selected by a facility resident or patient who has not been adjudged incapacitated under chapter 475, or the guardian or legal representative of the resident or patient;

(3) "Facility", a hospital licensed under chapter 197 or a facility licensed under chapter 198.

3. During a state of emergency declared pursuant to chapter 44, a facility shall allow a resident or patient who has not been adjudged incapacitated under chapter 475, a resident's or patient's guardian, or a resident's or patient's legally authorized representative to designate an essential caregiver for in-person contact with the resident or patient in accordance with the standards and guidelines developed by the department under this section. Essential caregivers shall be considered as part of the resident's or patient's care team, along with the resident's or patient's health care providers and facility staff.

4. The facility shall inform, in writing, residents and patients who have not been adjudged incapacitated under

chapter 475, or guardians or legal representatives of residents or patients, of the "Essential Caregiver Program" and the process for designating an essential caregiver.

5. The department shall develop standards and guidelines concerning the essential caregiver program, including, but not limited to, the following:

(1) The facility shall allow at least two individuals per resident or patient to be designated as essential caregivers, although the facility may limit the in-person contact to one caregiver at a time. The caregiver shall not be required to have previously served in a caregiver capacity prior to the declared state of emergency;

(2) The facility shall establish a reasonable in-person contact schedule to allow the essential caregiver to visit the resident or patient for at least four hours each day, including evenings, weekends, and holidays; provided, such schedule shall be consistent with the facility's visitation policies concerning hours and location of visitation;

(3) The facility shall establish procedures to enable physical contact between the resident or patient and the essential caregiver. The facility may not require the essential caregiver to undergo more stringent screening, testing, hygiene, personal protective equipment, and other infection control and prevention protocols than required of facility employees;

(4) The facility shall specify in its protocols the criteria that the facility will use if it determines that in-person contact by a particular essential caregiver is inconsistent with the resident's or patient's therapeutic care and treatment or is a safety risk to other residents, patients, or staff at the facility. Any limitations placed upon a particular essential caregiver shall be reviewed and

documented every seven days to determine if the limitations remain appropriate; and

(5) The facility may restrict or revoke in-person contact by an essential caregiver who fails to follow required protocols and procedures established under this subsection.

6. (1) A facility may request from the department a suspension of in-person contact by essential caregivers for a period not to exceed seven days. The department may deny the facility's request to suspend in-person contact with essential caregivers if the department determines that such in-person contact does not pose a serious community health risk. A facility may request from the department an extension of a suspension for more than seven days; provided, that the department shall not approve an extension period for longer than seven days at a time. A facility shall not suspend in-person caregiver contact for more than fourteen consecutive days in a twelve-month period or for more than forty-five total days in a twelve-month period.

(2) The department may suspend in-person contact by essential caregivers under this section if it determines that doing so is required under federal law, including a determination that federal law requires a suspension of in-person contact by members of the resident's or patient's care team.

7. The provisions of this section shall not be construed to require an essential caregiver to provide necessary care to a resident or patient and a facility shall not require an essential caregiver to provide necessary care.

8. The provisions of this section shall not apply to those residents or patients whose particular plan of therapeutic care and treatment necessitates restricted or

otherwise limited visitation for reasons unrelated to the stated reasons for the declared state emergency.

9. A facility, its employees, and its contractors shall be immune from civil liability for an injury or harm caused by or resulting from:

(1) Exposure to a contagious disease or other harmful agent that is specified during the state of emergency declared pursuant to chapter 44; or

(2) Acts or omissions by essential caregivers who are present in the facility;

as a result of the implementation of the essential caregiver program under this section. The immunity described in this subsection shall not apply to any act or omission by a facility, its employees, or its contractors that constitutes recklessness or willful misconduct.

208.909. 1. Consumers receiving personal care assistance services shall be responsible for:

(1) Supervising their personal care attendant;

(2) Verifying wages to be paid to the personal care attendant;

(3) Preparing and submitting time sheets, signed by both the consumer and personal care attendant, to the vendor on a biweekly basis;

(4) Promptly notifying the department within ten days of any changes in circumstances affecting the personal care assistance services plan or in the consumer's place of residence;

(5) Reporting any problems resulting from the quality of services rendered by the personal care attendant to the vendor. If the consumer is unable to resolve any problems resulting from the quality of service rendered by the personal care attendant with the vendor, the consumer shall report the situation to the department;

(6) Providing the vendor with all necessary information to complete required paperwork for establishing the employer identification number;

(7) Allowing the vendor to comply with its quality assurance and supervision process, which shall include, but not be limited to, annual face-to-face home visits and monthly case management activities; and

(8) Reporting to the department significant changes in their health and ability to self-direct care.

2. Participating vendors shall be responsible for:

(1) Collecting time sheets or reviewing reports of delivered services and certifying the accuracy thereof;

(2) The Medicaid reimbursement process, including the filing of claims and reporting data to the department as required by rule;

(3) Transmitting the individual payment directly to the personal care attendant on behalf of the consumer;

(4) Ensuring all payroll, employment, and other taxes are paid timely;

(5) Monitoring the performance of the personal care assistance services plan. Such monitoring shall occur during the annual face-to-face home visit under section 208.918. The vendor shall document whether services are being provided to the consumer as set forth in the plan of care. If the attendant was not providing services as set forth in the plan of care, the vendor shall notify the department and the department may suspend services to the consumer; and

[(5)] (6) Reporting to the department significant changes in the consumer's health or ability to self-direct care.

3. No state or federal financial assistance shall be authorized or expended to pay for services provided to a

consumer under sections 208.900 to 208.927, if the primary benefit of the services is to the household unit, or is a household task that the members of the consumer's household may reasonably be expected to share or do for one another when they live in the same household, unless such service is above and beyond typical activities household members may reasonably provide for another household member without a disability.

4. No state or federal financial assistance shall be authorized or expended to pay for personal care assistance services provided by a personal care attendant who has not undergone the background screening process under section 192.2495. If the personal care attendant has a disqualifying finding under section 192.2495, no state or federal assistance shall be made, unless a good cause waiver is first obtained from the department in accordance with section 192.2495.

5. (1) All vendors shall, by July 1, 2015, have, maintain, and use a telephone tracking system for the purpose of reporting and verifying the delivery of consumer-directed services as authorized by the department of health and senior services or its designee. The telephone tracking system shall be used to process payroll for employees and for submitting claims for reimbursement to the MO HealthNet division. At a minimum, the telephone tracking system shall:

- (a) Record the exact date services are delivered;
- (b) Record the exact time the services begin and exact time the services end;
- (c) Verify the telephone number from which the services are registered;
- (d) Verify that the number from which the call is placed is a telephone number unique to the client;

(e) Require a personal identification number unique to each personal care attendant;

(f) Be capable of producing reports of services delivered, tasks performed, client identity, beginning and ending times of service and date of service in summary fashion that constitute adequate documentation of service; and

(g) Be capable of producing reimbursement requests for consumer approval that assures accuracy and compliance with program expectations for both the consumer and vendor.

(2) As new technology becomes available, the department may allow use of a more advanced tracking system, provided that such system is at least as capable of meeting the requirements of this subsection.

(3) The department of health and senior services shall promulgate by rule the minimum necessary criteria of the telephone tracking system. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2010, shall be invalid and void.

6. (1) The vendor shall be liable to the consumer for any garnishment action occurring or that has occurred as a result of the vendor's failure to timely pay payroll, employment, or other taxes on behalf of the consumer under subsection 2 of this section. The vendor shall notify the

consumer of any communication or correspondence from any federal, state, or local tax authority of any overdue or unpaid tax obligation, as well as any notice of an impending garnishment.

(2) The vendor shall be subject to a one thousand dollar penalty per occurrence of the vendor's failure to time pay payroll, employment, or other taxes on behalf of the consumer under subsection 2 of this section.

565.184. 1. A person commits the offense of abuse of an elderly person, a person with a disability, or a vulnerable person if he or she:

(1) Purposely engages in conduct involving more than one incident that causes emotional distress to an elderly person, a person with a disability, or a vulnerable person. The course of conduct shall be such as would cause a reasonable elderly person, person with a disability, or vulnerable person to suffer substantial emotional distress; or

(2) Intentionally fails to provide care, goods or services to an elderly person, a person with a disability, or a vulnerable person. The result of the conduct shall be such as would cause a reasonable elderly person, person with a disability, or vulnerable person to suffer physical or emotional distress; or

(3) Knowingly acts or knowingly fails to act in a manner which results in a substantial risk to the life, body or health of an elderly person, a person with a disability, or a vulnerable person.

2. The offense of abuse of an elderly person, a person with a disability, or a vulnerable person is a class [A misdemeanor] D felony. Nothing in this section shall be construed to mean that an elderly person, a person with a disability, or a vulnerable person is abused solely because

such person chooses to rely on spiritual means through prayer, in lieu of medical care, for his or her health care, as evidence by such person's explicit consent, advance directive for health care, or practice.

630.155. 1. A person commits the offense of patient, resident or client abuse or neglect against any person admitted on a voluntary or involuntary basis to any mental health facility or mental health program in which people may be civilly detained pursuant to chapter 632, or any patient, resident or client of any residential facility, day program or specialized service operated, funded or licensed by the department if he knowingly does any of the following:

(1) Beats, strikes or injures any person, patient, resident or client;

(2) Mistreats or maltreats, handles or treats any such person, patient, resident or client in a brutal or inhuman manner;

(3) Uses any more force than is reasonably necessary for the proper control, treatment or management of such person, patient, resident or client;

(4) Fails to provide services which are reasonable and necessary to maintain the physical and mental health of any person, patient, resident or client when such failure presents either an imminent danger to the health, safety or welfare of the person, patient, resident or client, or a substantial probability that death or serious physical harm will result.

2. Patient, resident or client abuse or neglect is a class A misdemeanor unless committed under subdivision (2) or (4) of subsection 1 of this section in which case such abuse or neglect shall be a class **[E]** D felony.

630.202. 1. As used in this section, the following terms mean:

- (1) "Department", the department of mental health;
- (2) "Essential caregiver", a family member, friend, guardian, or other individual selected by a facility resident or client who has not been adjudged incapacitated under chapter 475, or the guardian or legal representative of the resident or client;
- (3) "Facility", a facility operated, licensed, or certified by the department.

2. During a state of emergency declared pursuant to chapter 44, a facility shall allow a resident or client who has not been adjudged incapacitated under chapter 475, a resident's or client's guardian, or a resident's or client's legally authorized representative to designate an essential caregiver for in-person contact with the resident or client in accordance with the standards and guidelines developed by the department under this section. Essential caregivers shall be considered a part of the resident's or client's care team, along with the resident's or client's health care providers and facility staff.

3. The facility shall inform, in writing, residents and clients who have not been adjudged incapacitated under chapter 475, or guardians or legal representatives of residents or clients, of the "Essential Caregiver Program" and the process for designating an essential caregiver.

4. The department shall develop standards and guidelines concerning the essential caregiver program, including, but not limited to, the following:

- (1) The facility shall allow at least two individuals per resident or client to be designated as essential caregivers, although the facility may limit the in-person contact to one caregiver at a time. The caregiver shall not be required to have previously served in a caregiver capacity prior to the declared state of emergency;

(2) The facility shall establish a reasonable in-person contact schedule to allow the essential caregiver to visit the resident or client for at least four hours each day, including evenings, weekends, and holidays; provided, such schedule shall be consistent with the facility's visitation policies concerning hours and location of visitation;

(3) The facility shall establish procedures to enable physical contact between the resident or client and the essential caregiver. The facility may not require the essential caregiver to undergo more stringent screening, testing, hygiene, personal protective equipment, and other infection control and prevention protocols than required of facility employees;

(4) The facility shall specify in its protocols the criteria that the facility will use if it determines that in-person contact by a particular essential caregiver is inconsistent with the resident's or client's therapeutic care and treatment or is a safety risk to other residents, clients, or staff at the facility. Any limitations placed upon a particular essential caregiver shall be reviewed and documented every seven days to determine if the limitations remain appropriate; and

(5) The facility may restrict or revoke in-person contact by an essential caregiver who fails to follow required protocols and procedures established under this subsection.

5. (1) A facility may request from the department a suspension of in-person contact by essential caregivers for a period not to exceed seven days. The department may deny the facility's request to suspend in-person contact with essential caregivers if the department determines that such in-person contact does not pose a serious community health

risk. A facility may request from the department an extension of a suspension for more than seven days; provided, that the department shall not approve an extension period for longer than seven days at a time. A facility shall not suspend in-person caregiver visitation for more than fourteen consecutive days in a twelve-month period or for more than forty-five total days in a twelve-month period.

(2) The department may suspend in-person contact by essential caregivers under this section if it determines that doing so is required under federal law, including a determination that federal law requires a suspension of in-person contact by members of the resident's or client's care team.

6. The provisions of this section shall not be construed to require an essential caregiver to provide necessary care to a resident or client and a facility shall not require an essential caregiver to provide necessary care.

7. The provisions of this section shall not apply to those residents or clients whose particular plan of therapeutic care and treatment necessitates restricted or otherwise limited visitation for reasons unrelated to the stated reason for the declared state of emergency.

8. A facility, its employees, and its contractors shall be immune from civil liability for an injury or harm caused by or resulting from:

(1) Exposure to a contagious disease or other harmful agent that is specified during the state of emergency declared pursuant to chapter 44; or

(2) Acts or omissions by essential caregivers who are present in the facility;

as a result of the implementation of the essential caregiver program under this section. The immunity described in this subsection shall not apply to any act or omission by a

facility, its employees, or its contractors that constitutes
recklessness or willful misconduct.